

DISTRICT OF COLUMBIA
STATEHOOD CONSTITUTIONAL CONVENTION

Thursday, May 20, 1982
5:35 o'clock p.m.

Auditorium, 9th Floor
929 E Street, N.W.
Washington, D. C.

Presiding:

Charles Cassell, President
James Baldwin, First Vice President
Janette Harris, Second Vice President
Alexa Freeman, Third Vice President
William Cooper, Secretary

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P R O C E E D I N G S

MS. FREEMAN: We are going to begin the question and answer reading period for the two remaining articles on local government while we're waiting for a quorum.

Delegate Moore, would you like to begin?

MR. T. MOORE: Yes, Madam Chairman.

MS. FREEMAN: We don't need a quorum for a reading period. We're reading the two local government articles.

MR. T. MOORE: Yes, Madam Chairman, I am Talmadge Moore, the vice chair for local government, and I am substituting for Marie Nahikian, who is the chairperson who is presently absent.

This article has been circulated and it meets the necessary requirements according to our rules.

Local Government. Section 1. Authority for Local Government Units. The Legislature Shall permit--page 1 of 3, dated 14th of May 1982. The Local Authority Article.

MS. FREEMAN: Does everybody have May 14th, the local authority article for Local Government.

MR. T. MOORE: Here is Ms. Nahikian so she can take over.

MS. FREEMAN: Delegate Nahikian.

MS. NAHIKIAN: Thank you. I have to say thank you

to my colleagues, particularly our vice chairperson, Talmadge Moore, for his support and help and I hope for his continued support and help the rest of the evening.

I will not read the proposed title on Local Authority. Section 1. Authority for Local Government Units. The Legislature shall permit areas of the state to elect local officers and to exercise such local authority other than the authority to tax, zone land or enact legislation as it may by law provide. The Legislature shall have the ultimate authority for establishing standards and for determining whether the proposed local government unit meets those standards.

Section 2. Implementation. A law implementing this Article shall be passed by the Legislature within two years of the convening of the first State Legislature and is subject to the approval of the electors of the state. If the law is disapproved, a revised law must be presented for electoral approval every other year for 16 years thereafter, until a law is approved.

Section 3. Service Delivery. The authority granted local government units pursuant to this Article shall include the power to receive appropriations in lieu of specified public services that would otherwise be supplied by the state and to use those appropriations to deliver services to local

residents.

Section 4. Charters. The State Legislature shall by law establish procedures to permit areas to petition for the election of a Charter Commission for their area, to be elected at the next regularly scheduled election for the purposes of drafting a charter for a proposed local unit of government. Charters shall include provisions for a charter amendment process and for a process by which neighboring areas may later be considered for inclusion in the local government unit. The State Legislature shall provide by law for the charter, drafted by the elected Commission, to be approved by the electors of the proposed subdivision in referendum, before its submission to the Legislature.

Section 5. Special Districts. The Legislature shall also have the power to create special districts as needed for public puposes.

Section 6. Advisory Neighborhood Commissions. Advisory Neighborhood Commissions shall continue to exercise the authority that they have at the time the state enters into the Union as well as any additional authority subsequently provided by law. The Legislature may nodify this structure but shall always provide for elected advisory neighborhood mechanism in unchartered areas of the State.

Madam Third Vice President, this is the proposed article on local authority. I think we're probably prepared to move to questions and answers.

MS. FREEMAN: Okay. Are there questions for Delegate Nihakian or for the committee?

MS. NAHIKIAN: Delegate Corn?

MS. CORN: If an area decides to set up a local government and meets the specifications as in a law that will create it, why won't you allow them to do their own zoning?

MS. NAIKIAN: The committee spent a number of hours looking at the three local authorities of taxation, zoning and legislation. In specific, the reason for the decision not to allow local governments to do their own zoning had to do with a number of factors.

Number one, we're looking at a state where the total square miles is 66 square miles, and unlike other jurisdictions, local jurisdictions, no ability to annex additional land.

Secondly, the committee had grave concern over the need to be able to balance certain kinds of institutions located throughout the city. I think the prime example is the discussion that has happened in a number of neighborhoods concerning halfway houses, concerning location of public housing, concerning a number of other state institutions that the

committee felt strongly about needed to leave the state the authority to deal with.

I know that, for instance, our vice chairperson, Delegate Moore, talked about problems in his neighborhood in Brookland where the neighbors are somewhat concerned by these penny arcades that are cropping up in neighborhoods.

There's a similar concern in my neighborhood in Adams Morgan. The tradeoff becomes unless you leave zoning centralized, if you allow zoning decisions to be made at a local area at the same time a neighborhood may make a wise decision not to allow an arcade kind of operation, they may also make a decision that they don't want, for example, any halfway houses for the mentally retarded in their neighborhood.

I think that was the basis for the decision.

MS. CORN: May I follow up with a question? Don't you think a neighborhood has the right to decide whether or not they want a halfway house in their neighborhood? After all, isn't the government for, by and of the people so that if they don't want a halfway house for former criminals or criminals out on probation or alcoholics, don't they have that right?

MS. NAHIKIAN: I agree that certainly a neighborhood has a right to say something about that. At the same time, the state has an obligation to service all of the people

of the District of Columbia, some of them who may be mentally regarded and need to live in a halfway house in a neighborhood.

Delegate Long, did you have a question?

MR. LONG: Yes. I am concerned about what's really the guts of this whole article contained in Sections 3 and 5. They provide for the withdrawal of sections of the city for the service delivery system and the economic effects, by that I mean, the efficiency in which the remainder of the service delivery system is operated. I should think would be critically severely injured.

Suppose Wards 1 and 6 were to pull out for garbage collection. That would mean that the rest of the city would have to work around these holes in the middle of the connected area, and I wondered if that kind of an effect had been discussed in committee.

MS. NAHIKIAN: In response to your question, there was hours of debate and discussion about the effect of Section 3 which would allow, as Delegate Long pointed out, a neighborhood, a community, to elect a charter commission, number one; for that charter commission to recommend a local form of government, and that local form of government may--it does not say "shall"--it says may be granted the authority by the legislature to receive appropriations in lieu of services

where a neighborhood could provide their own services.

Now, the question becomes (a) is that going to cost more, (b) is it going to be as effective, (c) will there be an effect on service delivery to the rest of the areas that may be unchartered.

You wrestle with a severe dilemma here, and I put the dilemma to the delegates because it's one that the committee wrestled with. As we move to a new state, it is very difficult to envision what the transition mechanism would be to allow a local area to begin to assume local authority.

For example, it is clear to me from testimony before our committee that Ward 3 or neighborhoods in Ward 3 would quickly move to have their own police force, their own garbage collection, you know, collect their own taxes, et cetera, and would be capable of doing that.

The concern for the committee was how do you balance that off against other areas of the city that may not be ready to assume those responsibilities. Therefore, Section 3 is not an absolute. It is a "may". And it is up to each neighborhood to design how such service delivery mechanism may work, if they choose to do it.

Secondly, we did not address the specifics of the process. Instead, we did what we thought was a wise decision,

and that was, if you look at Section 2, Section 2 says that the legislature must create a law setting up standards by which local government charters would have to abide.

We know that one of the things that would have to be addressed is how this service delivery mechanism would work. We chose at this point not to put it in the constitution and felt like it was more appropriate for legislative action.

Delegate Oulahan.

MR. OULAHAN: Madam Committee Chair, for purposes of legislative history, does Section 3 mean that when authority is granted a local government unit that local authority has to include the power to receive appropriations including a public service?

In other words, the legislature cannot give local authority and say, "We're not going to give you any public services because they have to be done by the city overall"?

MS. NAHIKIAN: The legislature would be required in that law to figure out a mechanism for allowing those neighborhoods who chose to do service delivery, those neighborhoods that wanted to take that power.

Now, I should point out to you that the testimony before our committee and the extensive research we did shows that by and large areas of 5-, to 10- to 12,000 residents

can generally provide services more efficiently and cheaper than a central government can.

MS. FREEMAN: Delegates, could you be quiet, we're doing a reading period and we're trying to answer questions.

MR. OULAHAN: Why the procedure of having on the ballot every other year in effect a request to grant authority to local units? Why not have the matter presented and let's assume that we are defeated, why do we have to vote in it every other year and are there any other constitutions that have that kind of procedure?

MS. NAHIKIAN: You're referring to Section 2, Implementation?

MR. OULAHAN: That is right.

MS. NAHIKIAN: The concern is, and the concern of the committee, grew in many ways out of the experience that many of us had when Advisory Neighborhood Commissions were allowed to exist under the Home Rule Charter.

The DC Council, the legislature, dragged its feet consistently in drawing up a law to implement that kind of local advisory authority. Consequently, we felt like that because local government hopefully will be the entity of government closest to people, that it's the one point where people should have the most participation in the kind of law that

the legislature draws up.

But at the same time, we didnot want to find the state in the position that the legislature would draw up a law implementing this provision of the constitution in local govern-ment that absolutely no one wanted, having it defeated and not having any recourse for the future.

That's the reason why we chose to say--and initially I should tell you it was every year until a law was passed. We finally decided to put some limits on it and say every other year for a total period of 16 years.

MS. FREEMAN: Excuse me, Delegate Nahikian, Delegate Oulahan. I'm finding it hard to hear. Could the delegates please be quiet? If you must have conversations, please go to the back of the room or outside.

(Simultaneous discussion.)

MS. FREEMAN: I can put it to this body. We only have another ten minutes of the reading period for this article. So should we finish reading this article and then move on to the education or does it make more sense to stop?

MR. THOMAS: I understand we have a quorum. So I wish you wouldn't complicate it so they can go back and finish.

VOICE: Our meeting is done.

MR. OULAHAN: May I finish myquestion, Madam Chair?

MS. FREEMAN: Yes, you may certainly finish your question.

MR. OULAHAN: I understand your procedure for having a vote every other year is a novel thing.

MR. NAHIKIAN: Well, Delegate Oulahan, I guess if you wanted to call it novel you could.

The problem--excuse me, Delegates, we really can't hear.

I think the difficulty that we face with this whole article in the context of this constitution was an absolute dilemma; that on the one hand, the consensus of this committee was that this city or this state was not ready to move to a traditional form of local government like you would find in most constitutions and at the same time wanting to insure that there would be some form of local government within our new state. So that in and of itself presented a novel dilemma.

MS. FREEMAN: Are there any other questions?

Delegate Jackson?

MR. JACKSON: Maybe the question was asked in another section under service delivery, but in essence, you are saying the local governments can contract out jobs. Is that what it says? That's what it could be interpreted as saying, right?

MS. NAHIKIAN: No. What it says is that if a local

government area petitions to elect a charter commission, elects a charter commission, designs a form of local government which is approved by the legislature, that local government unit may--may--if it so chooses receive appropriations in lieu of services and they may provide those services however they see fit.

Now, many of you know in our neighborhood in Adams Morgan we have done a number of service delivery mechanisms where we hire residents. In many cases, there is a number of options about how to go about doing that. I do not see the options as contracting out, and in fact, the article does not specifically address how this authority would be granted. That would be left up to the legislature in designing the standards referred to under Section 2.

MR. JACKSON: Let me put it this way then. If the citizens in Adams Morgan are picking up trash and the local government says it has a local concern there or somebody in Maryland or somewhere has a small trash company that they want to hire to clean up the trash, they could hire this firm and they could use this instead of the existing services from the Department of Environmental Services which are a trade union group. And that's what it says services provided by the state. In essence, that's what it is.

MS. NAHIKIAN: Not, that's not what it is. What you have to refer to, Delegate Jackson, is Section 2. Section 2 says that the legislature is required to pass legislation setting up the standards for how that would operate.

We did not put any restrictions on the legislature. We left it totally to the legislature to design that system. It is very simple that the legislature may say that we will grant a local government unit the authority to receive appropriations in lieu of services as long as they use trade union labor or as long as they do not contract with firms outside the District of Columbia.

There are a number of ways that the legislature could address it. It was the committee's feeling that it should not be addressed in the constitution, but it was also the committee's concern--

MR. JACKSON: Excuse me. What should not be addressed in the constitution?

MS. NAHIKIAN: The details of what the charter standards would be and what the service delivery mechanism would be for one simple reason. We did not know enough about how city services are delivered. We didn't know enough and had concerns about exactly the issues that you raised that we felt the only way to address it and basically balance of a dual

concern was to leave the standards to be developed by the legislature.

MS. FREEMAN: Delegate Barnes.

MR. BARNES: Yes. I do not want to ask a lengthy question. But what is the least complex governmental structure that the legislature can make?

MS. NAHIKIAN: What is the least complicated?

MR. BARNES: What is the bare minimum structure that the legislature can implement?

MS. NAHIKIAN: Advisory neighborhood commissions.

MR. BARNES: In other words, they have the option of implementing exactly what we have now absolutely with no local government besides ANCs?

MS. NAHIKIAN: No, that is not correct. When you asked me the question and I responded advisory neighborhood commissions, it was largely on the Section 6 which says that if a neighborhood does not apply to elect a charter commission, does not apply to design a charter for local government, then the least that could exist would be advisory neighborhood mechanisms.

What you have to understand, Delegate Barnes, is that on one hand we said that the legislature would design the standards that would be the minimum authority but that

standards would have to be approved by the electors so that the local people, if they don't think they're being granted enough authority in the law setting up standards could disapprove the law. That's step number one.

Step number two is that when an area decides to apply for a charter for local government units, it is up to the people in that neighborhood to decide within the standards that have been passed in the statewide law exactly what authority they want to assume or will assume.

MR. BARNES: But the legislature can never say we don't want you to have a charter.

MS. NAHIKIAN: Precisely, and let me explain to you why the legislature can never say that. Look at page 2, line 16, 17, 18 and 19. That's exactly why we put that section in there so that the legislature couldn't say no.

Delegate Jordan, did you want to respond?

MS. FREEMAN: I think Delegate Robinson had a question.

MR. ROBINSON: Yes. My question is why is it that so much weight was given to advisory neighborhood commissions. There is some very definite language here that states that these divisions shall continue to exercise the authority that they have at the time the state entirety joins the union.

My concern is maybe there is a better way that has not been explored.

MS. NAHIKIAN: We agree with you, Delegate Robinson, and let me explain to you that I think that you are misinterpreting what Section 6 says.

MS. FREEMAN: Delegates, we are having about three more minutes of reading on this article. This is your last opportunity before we debate this article. Please listen.

MS. NAHIKIAN: We think there is a better way than advisory neighborhood commissions, and we want local government to have more power than that. That's the reason why we set up the charter provisions as contained in Section 1, the authority, Section 2, how it gets implemented; Section 3, the service delivery; Section 4 is charters.

The reason for Section 6 is to provide for transition so that at the time the state enters the Union, we don't suddenly have nothing, and allows ANCs to exist until a neighborhood requests and elects a charter commission and moves into local government.

And finally, it says that even as local government charters are accepted by the legislature and go into effect for local authority, that any neighborhood that has not applied for a charter, has not been desirous of a charter shall

at least have elected advisory neighborhood mechanisms.

So it's basically a transition provision.

MR. ROBINSON: I have another question in regard to the charter. When a neighborhood applies for a charter, can it by the very nature of the application specify what form of government it wants, a township or whatever form of municipality it desires?

MS. NAHIKIAN: Precisely. Each neighborhood could decide their own local structure within the board state standards set in the law that would be passed by the legislature referred to in Section 2.

We were very careful to leave that with the local areas both in terms of defining their boundaries as well as their structure.

MS. FREEMAN: We have time for one more question. Are there any more questions to ask to the committee?

Delegate Charles Mason.

MR. C. MASON: In reading over what we've already enacted, in the financial area it appeared to me that we had almost precluded any meaningful local government because it forebad a local government to create a debt which means a local government insofar as I am concerned cannot buy this pad of paper unless it came with cash in hand, and governments

don't operate purchasing with cash in hand.

How in the world could a local government exist if it could not buy a pad of paper?

MS. NAHIKIAN: I think there are a number of ways to approach. One would be that within the board state standards developed by the law and the legislature under Section 2, the legislature would choose to address that.

Given that finance and taxation says that there cannot be any debt, they could simply do it through appropriations or if there was strong feeling of a way to address that, you can amend the article.

I mean, I don't understand what the problem is exactly because there's a difference between (a) trying to sell bonds and being in debt and (b) having funds upfront to be able to provide whatever it is you need at the local government.

MR. C. MASON: Even if you have an appropriation and you do not pay in advance, you have created a debt when you have now purchased something which is satisfied as soon as you pay for it which may be the next day, but for that one day you have a debt.

MS. NAHIKIAN: I don't see that as a major problem but others may.

MS. FREEMAN: Delegates, I think we have a quorum in here. May we have a moment of silence. (Pause.)

Delegate Cooper, read the role please.

MR. COOPER: Delegate Baldwin; aye. Barnes, no. Blount, no. Brunig, aye. Cassell, no. Clarke, no. Coates, no. Cooper, aye. Corn, aye. Croft, no. Eichhorn, no. Feeley, aye. Freeman, aye. Garner, no. Graham, aye. Harris, aye. Holmes, no. Jackson, aye. Johnson, no. Jones, aye. Jordan, aye. Kameny, aye. Lockridge, aye. Long, aye. Love, no. Maguire, no. Marcus, aye. Charles Mason, aye. Hilda Mason, no. Brian Moore, aye. Jerry Moore, no. Talmadge Moore, aye. Nahikian, aye. Nixon, aye. Oulahan, aye. Paramore, no. Robinson, aye. Rothschild, aye. Schrag, aye. Shelton, no. Simmons, aye. Street, aye. Terrell, no. Thomas, aye. Warren, no. Barnes, yes. Cassell, no. Clarke, no. Coates, no. Croft, no. Eichhorn, no. Garner, no. Holmes, no. Johnson, no. Love, aye. Maguire, no. Hilda Mason, no. Jerry Moore, no. Paramore, no. Shelton, no. Terrell, no. Warren, no.

Madam Chair, 30 delegates answer the roll.

MS. FREEMAN: All right. We have a quorum. We have 30 delegates present. I'd like to thank Delegate Nihakian and the committee. We have finished the question and answer period

for the two remaining local government articles, and we will now proceed with completing the education article. The education committee can come forward, please.

Where we left off last night, we had just adopted-- quiet in the room. The meeting is now convened, Delegates. We are now on Section 3 of the education article. Section 3 called higher education. That's on page 4.

We have six more sessions in which to complete our constitution.

Delegate Lockridge.

MS. LOCKRIDGE: Madam Chair, I would like to move adoption of Section 3, Higher Education.

MS. SIMMONS: Second.

MS. FREEMAN: Discussion.

MR. OULAHAN: Mrs. Lockridge, I gather that unlike the system we have established for primary and secondary education, there is no authority whatsoever here in governing authority to exercise any control over private institutions of higher education.

MS. LOCKRIDGE: No.

MR. OULAHAN: There's no either direct or indirect method of control for an institution, a private institution for private education?

MS. LOCKRIDGE: No. What we see here is what we dealt with.

MS. FREEMAN: Is there any additional discussion on Subsection (a)? (No response.) Any additional discussion on Subsection (a)?

Deleg de Robinson.

MR. ROBINSON: Madam Chair, I move the previous question.

VOICE: Second.

MS. FREEMAN: All those in favor of closing debate on Subsection (a) of Section 3 please say aye.

(A chorus of ayes.)

MS. FREEMAN: Opposed.

(No response.)

MS. FREEMAN: Debate is now closed. All delegates who are in favor of adopting Subsection (a) of Section 3 please say aye.

(A chorus of ayes.)

MS. FREEMAN: Opposed.

(No response.)

MS. FREEMAN: Absentions.

(A show of hands.)

MS. FREEMAN: The Subsection (a) is adopted.

MS. LOCKRIDGE: I would like, Madam Chair, to move the adoption of Section 3(b).

MS. SIMMONS: Second.

MS. FREEMAN: It's been moved and seconded that we adopt Subsection (b). Is there any discussion?

Delegate Robinson.

MR. ROBINSON: Delegate Lockridget, I am concerned about the number of voting members that the governor will be appointing with the advice and consent of the legislature, and I would like to know the rationale used in arriving at this number, eight voting members appointed by the governor.

I am in favor, ma'am, of a larger number, but I would like to ask the board of the committee to explain their rationale for that magical number of eight.

MS. LOCKRIDGE: Delegate Robinson, if you will direct your attention to page 11 of our report, that deals with higher education, if you will direct your attention specifically to Section 3(b).

MS. SIMMONS: May I add. I would like to call to Delegate Robinson's attention that while the board of higher ed is in many places--in many places the board of higher ed as a board of regents is elected for every institution, and there are a number of state institutions in most states, and

each institution has its own board.

In this instance, eight seemed like a sufficient number because at least at this moment we're talking about a single university and probably if we had any additional schools, it would still be the one university with colleges of pharmacology, medicine, dentistry, engineering and whatever the additional ones would be.

And we thought it would be an adequate representation.

MS. FREEMAN: Is there any further discussion on Subsection (b)?

MR. C. MASON: Just for information, this number is 11 including the alumni and the student representatives. At the present time there are 11 appointed by the mayor with the advice and consent of the council plus four more making a total of 15.

There are three alumni, one student, and 11 mayorial appointees.

MR. KAMENY: I think we pointed out with the non-voting members it is 14.

MS. FREEMAN: Delegate Brian Moore.

MR. B. MOORE: Yes. The general counsel has suggested that this area seems to be very detailed and it would permit

flexibility. What is the committee response to that?

MS. FREEMAN: Delegate Lockridge.

MS. LOCKRIDGE: If you and Delegate Moore will direct your attention to page 11 I will respond to that. After researching the state constitutions, we found that most constitutions dealt with the language in that manner.

And that is why we chose as a committee to use that kind of detailed language in our constitution.

MS. FREEMAN: Is there any further discussion on Subsection (b)? Delegate Kameny, do you wish to answer the question?

MR. KAMENY: I would like to point out as well to Mr. Moore that, in fact, this section is really not detailed at all. It sets up the qualifications of 14 members in the boardest and nondetailed language. It tells them what they are to do on lines approximately 5 through 9 on page 7, and that is all. There is a true minimum of detail in this, except it gives that broad scope of review, and that's it. It could hardly be less detailed.

MS. FREEMAN: Delegate Jordan.

MR. JORDAN: Madam Chairman, I wanted to call for an end to the discussion.

A DELEGATE: Second.

MS. FREEMAN: All those in favor of closing off debate please say aye.

(A chorus of ayes.)

MS. FREEMAN: Opposed.

(A chorus of nays.)

MS. FREEMAN: Debate is closed on Subsection (b) of Section 3. All those in favor of adopting Subsection (b) of Section 3 please say aye.

(A chorus of ayes.)

MS. FREEMAN: Opposed.

(No response.)

MS. FREEMAN: Abstentions

(A chorus of abstains.)

MS. FREEMAN: Subsection (b) is adopted.

MS. LOCKRIDGE: Madam Chair, I'd like to move adoption of Section 3(c).

MS. SIMMONS: Second.

MS. FREEMAN: Discussion.

MS. CORN: What is meant by "except for cause"?

MS. FREEMAN: Which line are you on, Delegate Corn?

MS. CORN: Two.

MR. KAMENY: That goes with the phrase "by due process". You cannot simply, arbitrarily, say, "We do not like

you any more" or not even that. But for this, that or the other reason or for no reason not stated, you are gone. There has to be a specific cause in which the individual is given a right to contest under the phrase "due process".

MS. CORN: Why did you not put in here a definition of cause?

MR. KAMENY: That would be legislation. It would take the next ten pages. You'd be writing an entire legal text. The phrase is quite complete as it stands. It says he cannot be arbitrarily and capriciously fired.

MS. FREEMAN: Delegate Oulahan.

MS. CORN: Excuse me. I haven't completely had my question answered. May I ask one more thing on that same phrase?

MS. FREEMAN: Yes, you may, one more question.

MS. CORN: What kind of think did you have in mind as being for cause.

MS. SIMMONS: Mis-, mal- and nonfeasance.

MS. FREEMAN: Thank you. Delegate Oulahan.

MR. OULAHAN: Madam Chair, I don't know who to address this to Ms. Lockridge or Mr. Kameny. It has to do with Section 4

MS. LOCKRIDGE: You may address it to the entire committee.

MS. FREEMAN: We're still on Section 3, Subsection (c) of Section 3. Is there any further discussion on Subsection (c) of Section 3.

Delegate Brunig.

MR. BRUNIG: Move the question.

A DELEGATE: Second.

MS. FREEMAN: It's been moved and seconded that we close debate on Subsection (c). All those in favor please say aye.

(A chorus of ayes.)

MS. FREEMAN: Opposed.

(No response.)

MS. FREEMAN: The debate is closed on Subsection (c); all those in favor of adopting Subsection (c) please say aye.

(A chorus of ayes.)

MS. FREEMAN: Opposed.

(No response.)

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: Subsection (c) is adopted.

Delegate Lockridge.

MS. LOCKRIDGE: Madam Chair, I would like to move for the adoption of all of Section 3 as amended.

MS. SIMMONS: Second.

MS. FREEMAN: Discussion on adopting Section 3 as amended. Delegate Charles Mason.

MR. C. MASON: At the request of Delegate Hilda Mason who has talked with the committee chair, I am presenting a new proposed Section 3(d), 3(e), 3(f) and 3(g). Now, what these are are simply counterparts of what we did for the board of education.

3(d) says the president of the state university shall be appointed by the state board of higher education. The board shall prescribe the length of term, compensation, powers and duties of the president.

That is identical to the superintendent of instruction under the board of education. I move that and I have following (e), (f) and (g).

MS. FREEMAN: Would you bring the language up to the secretary, please?

MR. C. MASON: Once I bring the paper, I will not have the paper for the next one.

MS. FREEMAN: It has been moved. Do I have a second for that?

A DELEGATE: Second.

MS. FREEMAN: It has been moved and seconded that we

adopt a new Subsection (d) for Section 3. Would the secretary please read that again?

MR. LOCKRIDGE: Yes, read the whole thing very carefully.

MR. COOPER: Section (d). The president of the state university shall be appointed by the state board of higher education. The board shall prescribe the length of term, the compensation, the powers and duties of the president of the university.

MS. FREEMAN: Delegate Lockridge, would you like to respond to the motion on the floor.

MS. SIMMONS: Could we have all of it read very carefully? The committee has not seen it, and while I know the chairman has--

MS. LOCKRIDGE: No, I have not.

MS. SIMMONS: We would like to hear it in its total context so that if (e) and (f) hinges on (d), then we may want to kick it on that.

MS. FREEMAN: I think that's a good idea, Delegate Simmons. We will deal with them seriatim but we should hear the whole thing.

MR. C. MASON: I've already read (d). (e) Each fiscal period the legislature shall appropriate a total amount

for the state board of higher education and the institution subject its control but not in line item manner. The expenditure of this money shall be under the exclusive control of the state board of higher education.

Again, that is an exact counterpart of the board of education.

(f) Any property entitled in the District of Columbia or the State of whatever it is and used by or acquired for the use of the trustees of the University of the District of Columbia or any of its predecessor institutions or of the state board of higher education shall hence forth be deeded and be titled--

A DELEGATE: We can't hear.

MS. FREEMAN: Could you use the microphone, Delegate Mason? Is this similar to Subsection (e) in the previous article?

MR. C. MASON: Absolutely the same.

MS. FREEMAN: Thank you. That's helpful for people.

MR. C. MASON: Any property titled in the District of Columbia or in the State of blank and used by or acquired for the use of the trustees of the University of the District of Columbia or any of its predecessor institutions or of the state board of higher education shall hence forth be deemed

to be titled in the name of the state board of higher education of the State of blank.

MS. FREEMAN: Thank you. It should be pointed out to delegates that the three amendments that Delegate Mason has put on the floor are similar to Subsections (c), (d) and (e) of Section 2 which we've already adopted.

Delegate Lockridge, would you like to respond for the committee please?

MR. C. MASON: I still have (g).

MS. FREEMAN: I'm sorry, Delegate Mason.

MR. C. MASON: Now, (g) is a little more complicated because there are three alternate versions of (g), and I was asked by Delegate Hilda Mason to ask the committee which of the three they prefer, and I will read them and point out the differences. They have to do with the leasing and sale of land, and this was a thing we spent a lot of time on last night.

Actually, the first part of all three of them are just the same, but the first alternate is:

The state board of higher education shall control the purchase, sale, lease and rental of its buildings and lands and shall have the power to receive and use any rents, incomes or proceeds of sales received therefrom.

That's the first alternate. Now, the second alternate is exactly the same but with one additional sentence. The additional sentence is:

However, no such buildings or lands shall be sold except by consent of the legislature.

Otherwise, it's like number one. The third alternate is just like number one but has a different additional sentence. The additional sentence on the third alternate is:

However, no such buildings or lands shall be leased for a term of more than five years or sold except by consent of the legislature.

On talking to the people who spoke last night with respect to the board of education about the problem of leasing, it seemed to us that the concern was not short-term leases but 99-year leases, et cetera, where somebody might lease land from the board of education, tear down the school and put a piece of a hotel or all kinds of things like that.

I pointed out that many of these use agreements or leases or whatever they may be called may be only for a few days. A community organization may want a school gym to have a bazaar or exhibit in or something and arrange to pay for its use for just a few days, and it would be absurd to have to go to the Council with all its lengthy procedures to get such

approval.

So this simply is changed so it requires approval of the council only for long-term leases. I put quite arbitrarily five years. That could be any other number, and I would ask the committee which of these three they prefer that I move. I'll move any one of the three that the committee would like to have.

MS. FREEMAN: I think we should first start with Subsection (d) which you proposed. Could you turn in your language to the secretary so he could read it back out? I would also like the committee to respond.

MS. LOCKRIDGE: The only problem we have, Madam Chair, was the first one you suggested and that is (d). We felt we had taken care of all of that in Section 3(a).

MR. OULAHAN: Madam Chair, a point of order. This is a complicated amendment and an important amendment for many of us. Could we now go on to Section 4, have this typed up, xeroxed and distributed, because there is going to be wrangling over words here? None of us will have it in front of us. I'm trying to expedite, not oppose.

MR. C. MASON: I would be happy to do that if the arrangements could be made to do that. I would point out, however, that except for (g) they are absolutely identical

to what we did last night for the board of education, except that wherever board of education comes in, we insert board of higher education. Wherever it says, school system or the equivalent comes in, we say university or its predecessor institutions.

MS. FREEMAN: Delegate Kameny.

MR. KAMENY: I point out, however, that the board of higher education is not in parallel to the board of education. There are certain legal complexities in here.

MS. FREEMAN: Delegate Kameny. I think we had a suggestion. Delegate Kameny, I think you're getting to the merits and we had a suggestion from Delegate Oulahan that we get the proposals xeroxed for all delegates to read them. I think that's a good idea.

Mrs. Ellington, could you please arrange to have Delegate Mason's proposals xeroxed and distributed to the delegates, and we shall move on with subsection 4 and table the motion to adopt Section 3.

Delegate Lockridge.

MS. LOCKRIDGE: Madam Chair, I would like to move the adoption of, if that is in order, Section 3 as amended.

MS. FREEMAN: No. We want to move on to Section 4.

MS. LOCKRIDGE: Okay. Hold that. I would at this

point like to move the adoption of Section 4(a).

A DELEGATE: Second.

MS. FREEMAN: Is there discussion on the adoption of Subsection (a) of Section 4? Delegate Corn.

MS. CORN: I have one question. If there is, in fact, a requirement for standards at every school throughout the state, like in New York State, for instance, whether you lived in Albany or Long Island, you had to read Moby Dick, let's say, in the 10th grade, and it was provided by the school, if you went to a public school.

If you went to a private school, since that was a statewide requirement, the books that were required reading at all the public schools were also given to the private schools for free.

Under this system, would that be allowed or not?

MS. LOCKRIDGE: No.

MR. KAMENY: Why should it be?

MS. CORN: Can I ask why not? If the required reading list is, let's say, Text Book Number 1 and ten novels, and there are ten specific novels, let's say a Dickens, James Joyce. I don't know, whatever. I can't think of any English at the moment. I can only think of French novels.

If there are ten required reading books on the

reading list that would be read, whether it's in Anacostia or Chevy Chase, and they are also required for private schools, and if those same students instead of attending private schools were going to the public school, you would be giving them those ten books and the text, why won't you give them to the kids in the private schools?

MS. FREEMAN: Would Delegate Simmons like to respond for the committee, please?

MS. SIMMONS: Well, I would like to make one offering and that is that here we are talking financing with regard to public schools, and the minimum standards. When people decide to have private institutions for whatever variety of reasons and they know that their licensing comes from a state body, they then comply with that, and they have done that evaluation and made that election and have assumed in some kind of mature fashion to accept whatever that additional responsibility may be, because that, to them, is appropriately equated with whatever the advantages are even though they may be esoteric.

I believe that there is not a way for us without violating the separation of church and state that we would do what you are proposing.

MS. FREEMAN: Delegate Schrag.

MR. SCHRAG: Madam President, I move an amendment to add at the end of Section (a) some language which will make it exactly parallel to the language we adopted in the finance and taxation article.

The language to be added at the end of this section is "... , unless earmarked for a program of public service."

MS. CORN: Second.

MS. FREEMAN: Discussion.

MR. SCHRAG: You may remember the other night when we were debating the finance and tax article, Delegate Talmadge Moore and myself discussed Georgetown University's Street Law Program which was an example of a problem to which the government presently devoted funds to a school that is technically a Catholic school but which provides a service to the entire community by teaching in the public schools, and we adopted this amendment. We accepted the finance and tax articles.

Now reading as we adopted it that no appropriations shall be made from any public funds whatever in aid of any religious creed, church, or sectarian purpose or to help support or sustain any private school, academy, seminary, college or university or any other institution of learning controlled by any religious creed, church or secretarian domination whatever unless earmarked for a program of public service.

So this is just making the two sections parallel.

MS. FREEMAN: Would the committee like to respond?

MR. KAMENY: I would like to ask a question.

MS. FREEMAN: Delegate Lockridge, do you want to designate?

MS. LOCKRIDGE: Delegate Simmons.

MS. FREEMAN: Delegate Simmons.

MS. SIMMONS: The point that Delegate Schrag made, your analogy with Street Law for the public schools which there certainly goes into Georgetown and there's a good experience for young people--I'm not sure if what this says is analogous to that example.

In that example, not only are those federal funds but the matching decision is made on an annual basis. It is not locked in for life, and this to me, I am wondering about what this would mean in terms of making it constitutional. It's going to have a board of directors. That board can make that decision on an annual basis just as the Street Law is determined every year based on whatever funds we have as we balance that against the other needs of the school.

And Street Law went out last August and I happened to have been chairman of the federal grants committee and it get back into the budget until October. But there was a good

deal of deliberation about some other factors before we made the decision to that matching.

MR. SCHRAG: I'm not trying to require funding. I'm just trying to make sure that funding is not precluded, because Delegate Simmons, the text of the section as it presently reads is that the state shall provide no financing. That would bar the state from funding for public service.

MS. SIMMONS: What I'm trying to say is that no state funds were used in that program that you used as an example. As I earlier indicated, that came from federal grant money exclusively.

MS. FREEMAN: Is there any other discussion on this? Delegate Nihikian:

MS. NIHIKIAN: I would like to ask the committee whether or not this section without the Schrag amendment would allow the state to contract with a number of local churches for day care, day care contracts.

MS. FREEMAN: Delegate Lockridge, would somebody from the committee like to answer that?

MS. LOCKRIDGE: Would you look at page 7-d beginning at line 20.

MR. NIHIKIAN: What about state funds?

MS. FREEMAN: Delegate Lockridge.

MS. LOCKRIDGE: If it is controlled by the state, there is no problem with it. That was our intent.

MS. NIHIKIAN: What I am referring to is, and let me see if I can come up with an example, Calvery Methodist Church has a day care contract with the Department of Human Services to provide day care educational services.

Some of that funding is state dollars. Some of it is federal dollars. But some of it is state dollars. And I read this to say if we don't add the Schrag language, that that will be prohibited.

MS. FREEMAN: Is there anyone from the committee who would like to respond or shall we continue discussion on this?

Delegate Kameny.

MR. KAMENY: Delegate Nihikian is correct and that is what was intended. It was supposed to be prohibitive.

MS. FREEMAN: Delegate Jordan.

MR. JORDAN: Madam Chair, I have the same concern in what I saw in pre-elementary. It appears in two sections in this article in reference to pre-elementary schools or education.

The reason I was concerned about it is one that we do have not only in churches but other facilities preschool programs that are funded with both state and federal money,

but it seemed to be a bit inconsistent. When we go back to Section 2, we still have primary and secondary education. We say that education is compulsory, and therefore, the state must provide education for those between the ages of 6 and 18.

MS. LOCKRIDGE: Preschool is before.

MR. JORDAN: I do not see where it's provided for in here. It says the state shall provide for establishment, financing and control of a uniform, high quality, statewide system of free public primary and secondary school with specialized schools for all residents for their education.

And I don't know if we have uniform standards, but standards established by the state board of education shall be proposed for all residents between the ages of 6 and 18, except all those already completed all secondary requirements.

All public schools shall be free of sectarian or religious instruction. Children of the diplomatic corps may attend public schools.

And what I'm suggesting is here that this does establish an age requirement. It establishes basically a contractual relationship between the board and the public for educating students between the ages of 6 and 18.

But there is no similar requirement to educate those under the age of 6. Now, if someone from the committee can

show me in an article where it is mandated.

MS. FREEMAN: Delegate Lockridge, would you like to answer that or a delegate of the committee?

MS. LOCKRIDGE: Some is up.

MS. SIMMONS: I would like to say, Delegate Jordan, that is correct. That is correct, because what we're talking about is the legal obligation of the state will be for ages 6 to 18.

Preschool is good, wonderful. We support it. We think the people are happy. However, school systems generally cannot afford to guarantee preschool because regulations suggest you must have one teacher and one aide per 20 children which means you begin with \$25,000 for salaries alone for two persons in the classroom with 20 kids, and that's before a building or any supplies or materials, et cetera.

I am suggesting it was not an accident. It was a conscious thought on the part of the committee not to encumber the state to the obligation of mandatory pre-elementary education.

MR. JORDAN: We're back to the point I was making. If there is no obligation on the state to provide pre-elementary education, why should the state control it.

MS. SIMMONS: Licensing is one thing.

MR. JORDAN: The state is under no obligation to provide it.

MS. FREEMAN: I think the question is quite clear, Delegate Jordan. Delegate Lockridge.

MS. LOCKRIDGE: Are you suggesting that we take out of there--so we can move on--pre-elementary?

MR. JORDAN: Yes. I would feel comfortable if the reference to pre-elementary in both sections were removed. I don't know what the effect of the previous amendment will have on that, but I would feel comfortable if pre-elementary were removed.

MS. FREEMAN: Delegate Jordan, could you hold, if you wanted to make that an amendment, until we've completed the Schrag amendment, because it's really not germane.

All right. Discussion on the Schrag amendment please. Is there anybody who has not yet spoken on that. Delegate Love.

MR. LOVE: This section is very clear, and it's in many, many state constitutions. What it says is the state will not give money to a non-state school. If the state wanted to run pre-elementary classes, it could do it. What you cannot do is drain money away from public education and syphon that money off to non-public education at any level.

It is very clear what we are trying to do, and many,

many states do this same thing. It does not preclude the state from running any kind of pre-kindergarten programs at all.

MS. FREEMAN: Delegate Love, we're really dealing with the Schrag amendment right now.

MR. LOVE: I understand, but Schrag's amendment, what it would do, it would open the box up to taking money away from public schools and sending them under various guises to non-public schools.

I think what you have to decide here is how important are the public schools, how much money is available for education, what happens to that money if it leaves the public schools. Thank you.

MS. FREEMAN: Delegate Hilda Mason.

MS. H. MASON: Thank you, Madam Chairman. I would like to ask the committee does this mean that programs like the D.C. Street Academy could not receive funds?

MS. SIMMONS: They do not receive funds.

MS. H. MASON: When I was on the board, they did. They received services in kind like teachers and other staff. Does this mean that that would forbid the schools from receiving it?

MS. FREEMAN: Delegate Lockridge.

MS. LOCKRIDGE: Yes, ma'am, it would. Money is not

allowed from the school, is it?

MS. SIMMONS: But Street Academy was not a secretarian, demoninational or religious school.

MS. H. MASON: It says or any pre-elementary, elementary, secondary or post which is not owned and exclusively controlled by the state.

MS. FREEMAN: Did you have another question, Delegate Mason?

MS. H. MASON: I'm trying to get clarification.

MS. SIMMONS: It is "exclusively".

MS. H. MASON: Once Street Academy was under the Washington Urban League.

MS. FREEMAN: Would one person from the committee please respond to Delegate Mason's question?

MS. SIMMONS: I would like to clarify the street. There were two academies. That came initially as an \$895,000 federal grant to the Urban League. The relationship was that the public schools said, "You may do that as a pilot and we will provide you students to attend, and it will be an alternative for our young people. As it marches down the road, if the pilot gets validated, we will then assume at 20 percent per year the absorption of that program designed in the public schools," which is what we did.

And in a five-year period, the public schools completely paid for the program but prior to that those were federal funds, and the school system was not paying into anything.

MS. H. MASON: Now, my question is twofold. Would that stop that? And the other part of my question is now that the federal government has a new formula that they're giving state grants, would that be called state money or federal money and would this forbid the use of that?

MS. SIMMONS: The state becomes the passthrough in Chapter 2 where they consolidated the money.

MS. H. MASON: I want to be very careful because that Street Academy was a good program.

MS. SIMMONS: And we still have it, and it's completely and exclusively controlled by the public schools.

MS. H. MASON: And the other Street Academy, for the record, is in the University of the District of Columbia's budget.

MS. FREEMAN: Is your question sufficiently answered, Delegate Mason? (Pause.) Delegate Talmadge Moore.

MR. T. MOORE: This is a point of information that I was seeking. I am concerned about all these programs we have in D.C. now. Are we saying the state is not willing to match

the federal dollars? I thought that was a policy throughout our country, our representative form of government. That if the state put up so much money the federal would match those dollars, and we can take care of those educational programs which are not affiliated directly with the system.

And I would say that as a point of information. I want to get that information on whether I will support this amendment.

MS. FREEMAN: Delegate Lockridge.

MS. LOCKRIDGE: Delegate Feeley.

MS. FEELEY: Delegate Moore, if you would look on page 7D, we believe that your concern is covered there.

MS. FREEMAN: Delegate Graham.

MS. GRAHAM: Madam Chairman of the Convention, I would like to have inserted--I don't know if this is the proper time or not--since they are naming kinds of schools, I work in a middle school, and I don't see middle school listed here.

If they want to say pre-elementary, elementary, then I think middle school should be there, too.

MS. LOCKRIDGE: A middle school is still an elementary school.

MS. FREEMAN: Delegate Graham, Delegate Lockridge, it's really not germane to the amendment which is on the floor.

It is the Schrag amendment which is on the floor.

MS. GRAHAM: I'll bring it up later.

MS. FREEMAN: Thank you. Delegate Eichhorn, you had your hand up.

MS. EICHHORN: I am concerned that Section (d) contradicts this section. I understand what you are saying. But you're saying two different things it seems to me. You are saying that no local moneys can go to a school that is not wholly owned or exclusively controlled by the state, and then you're saying nothing shall restrict the flow of such money to a school that is not locally controlled if there is federal money.

MS. FREEMAN: May I have someone from the committee to try to respond? It's very hard to tell when the delegates are through asking the question because the committee begins to answer in advance of the delegates finishing the question.

Delegate Eichhorn.

MS. EICHHORN: The second part of my question is I am concerned that there are some school buildings which are made available for use by private groups at reduced or no rent, and I think that by saying the state shall provide no financial support either directly or indirectly that there are schools, at least in my neighborhood, that are used at rent free or for

a \$1 a year by such programs. That would in the future be prohibited from indirectly being financially assisted.

MS. FREEMAN: Delegate Lockridge, is there somebody from the committee that would like to respond to that question?

Delegate Simmons.

MS. SIMMONS: First of all, there is not an inconsistency between (d) and 1 because federal dollars, when federal dollars come to the state it's still a passthrough. Those are still federal dollars because that state would not have those dollars at its disposal to be allocating if they didn't come from the federal government.

So I don't see any contradiction there.

MS. EICHHORN: That was not the question Delegate Moore asked. Delegate Moore said if a private educational institution receives federal funds which must be matched by the local government or the state government, can the state government match them, and the answer is now.

MS. SIMMONS: What Delegate Moore said--

MS. FREEMAN: May I have quiet in this room?

MS. SIMMONS: I think he meant just the reverse. There are programs that a state government nor a local government can have unless they are willing to match them. Vocational ed is a perfect example, Colonel Moore, and that one you

have intimate knowledge with.

The fact is that X number of federal dollars are given and the local must match at least by one, and we know that you have to do it by one, but it can be by 16. But the point is that, contingent upon receiving the dollars, is the willingness and the disposition as free moral agents for that jurisdiction to match it.

That's why you find some states and some jurisdictions who accept no federal dollars. It doesn't mean that their children don't have that curriculum or that program at their disposal. It means they have elected not to have the obligations that accompany the receipt of those dollars, and this does not obviate. It still leaves that option to the state to receive those dollars, and of course, you then must comply with whatever when you make that decision.

But this doesn't keep that from happening, and private institutions and organizations where the state serves as a passthrough, it must be understood that that is precisely what it is, and those are still federal dollars.

MS. EICHHORN: What about the Capitol Hill Day School? They rent the building for \$1 a year.

MS. SIMMONS: Well, we're talking about a constitution that has already established--now, if you want to talk

about consistency, over here last night what we passed in (e) and (f) was how buildings would be rented, leased or sold in the future.

For you to use what's happening in a situation where the buildings aren't even under our control now is not an appropriate analogy to what is being written and designed for the future.

MS. EICHHORN: What I am asking is that it is my impression from reading this that the program will be expelled from that building. The state will be no longer able to indirectly financially assist an existing program.

MS. FREEMAN: May I have a yes or no answer to that question? I think that's what the delegate is asking.

MS. SIMMONS: I don't think there's a yes/no because she can't assume that they can't pay rent. They just aren't being charged rent because the school system has followed a policy of saying, "We don't get the money anyway. It goes straight into the treasury. We can't even use it for paying for the maintenance and the upkeep of the building on the utilities."

So they have made judgments that this is a valuable program, performs a good community service, and they let some organizations and nonprofit and community-based groups use

those facilities because of the worthiness of the program.

But we're talking about a constitution that was designed and determined by this body last night that there will be leasing, rent and sales authority within this body.

Now, to suggest that some previous practice becomes the order of the day for the future, I think is an inappropriate conjecture.

MS. FREEMAN: Thank you, Delegate Simmons.
Delegate Baldwin.

MR. BALDWIN: It appears to me that most of the discussion and debate that I've heard was not germane to the issue anyway. Section 4(d) is strictly with supporting, financial support and it says directly or indirectly to schools or institutions.

The Schrag amendment deals with programs or service, and there's nothing in Section 4 that says that we cannot contract with those type of schools for our service because you are actually buying a service.

And all of the discussion I've heard thus far is talking about whether or not we can deal with services or programs, and that section deals strictly with financing and it says, "Restricting on financing of nonpublic education," and it says, "The state shall provide no financial support,"

and it says schools, pre-elementary, elementary, secondary. They are referring to schools and financial support to those schools. It does not say that we cannot contract for our services with those schools. And I think there's a vast difference.

MS. LOCKRIDGE: Yes. And I think all of those things that we have been discussing here would come under the purview of the state board of education.

MR. BALDWIN: Yes, I think so, too.

MS. FREEMAN: A number of people have spoken but Delegate Nihikian has not spoken before this.

MS. NIHIKIAN: In light of Delegate Baldwin's comments, I would really like to ask the legal counsel to respond, because my concern is that if everyone feels and the intent of the committee is that Section (a) would, in fact, allow for us to fund programs and contract for services, please note the language of the first sentence.

It says, "The state shall provide no financial support." It doesn't say the state shall not provide any financial support from public education funds. It says across the board categorically the state shall provide no financial support. And it says, either directly or indirectly.

That is very strong language, but I would hate for

us to have intended one thing and find ourselves down the road having prohibited it.

MS. FREEMAN: I think that is a good idea, Delegate Nihikian. Mr. Thomas.

MR. THOMAS: Okay. Just let me direct my comments to Subsection (a). I would only state that Subsection (a) speaks for itself in that the state shall provide no financial support directly or indirectly to any secretarian, demoninational, et cetera, et cetera, which is not owned and exclusively controlled by the state.

Now, following up on your question which is?

MS. NIHIKIAN: Could they contract to the church for a day care center?

MR. THOMAS: Well, I don't think that this section deals with that question right now. One of these sections will.

MS. NIHIKIAN: It's pre-elementary education.

MR. KAMENY: But it is not a school program.

MS. H. MASON: But it is indirect.

MR. THOMAS: It is not a school.

MS. H. MASON: How about the police academy?

MR. THOMAS: That may qualify as a school when you go to (b)1 which says "support the attendance of any student at any pre-elementary, elementary, secondary school or other

location or institution at those levels."

But Delegate Schrag's amendment concerning the Street Law I think does address this section. I think this section, as written, would not fund the program. You could not fund the Street Law Program.

MS. FREEMAN: Delegate Schrag, would you like to close debate on this?

MR. SCHRAG: I would like to close debate.

Fellow delegates, if the committee's understanding is as Delegate Baldwin said that the state could contract with other institutions, with private schools, with secretarian schools for services to a lot of communities, then there's absolutely no harm in adding this section because it just makes explicit what the understanding already is.

We might as well add the words and not have an argument about it. In response to Delegate Love I say this is not taking any money out of the public school budget. Delegate Hilda Mason is exactly correct. The language says, "The state shall provide no financial support." It doesn't say the board of education may supply no financial support.

This is an across-the-board language here, and to insure that the state legislature through other programs, not taking money out of the school funds, but from other programs

can contract with the many institutions of education, including the many institutions of higher education that we have in this jurisdiction, to enable them to do that. to provide services to all the people in the city we might add these few words.

Now, you know that there are all kinds of universities that do receive small amounts of District money at the present time to provide wide services to the community, medical clinics, legal clinics, all kinds of services that are provided through private universities.

And this section, unless we add these words, which we already did the other night in another section overwhelmingly, unless we add these words, I'm afraid that we will bar the state from continuing these very worthwhile programs throughout the District.

MS. FREEMAN: Delegate Robinson.

MR. ROBINSON: I stand to speak in favor of the amendment to Section 4(a) as outlined by Delegate Schrag. I, too, cannot see the assistance granted by the state to a program as being the same in terms of being a financial support of a secretarian or dominational or religious school.

And of course, I would hate to see this constitution written so as to eliminate those vital purposes that are currently in our present system being utilized by the citizens

of our city through such institutions.

And so I again ask my fellow delegates to support the Schrag amendment.

MS. FREEMAN: Delegate Brunig.

MR. BRUNIG: Call for the question.

MR. ROBINSON: Second.

MS. FREEMAN: All right. It's been moved and seconded to close debate on the Schrag amendment. All those in favor of closing debate please say aye.

(A chorus of ayes.)

MS. FREEMAN: All those opposed.

(No response.)

MS. FREEMAN: Debate is now closed on the Schrag amendment which would add at the end of Subsection (a) "... , unless earmarked for a program of public service." May I have quiet in the room. We are ready to vote. All those in favor of adopting the Schrag amendment please raise your hands and keep them up.

(A show of hands.)

MS. FREEMAN: All those opposed please raise your hand.

(A show of hands.)

MR. COOPER: Twenty in favor; six opposed.

MS. FREEMAN: The Schrag amendment is adopted.

I first want to ask do Delegates Jordan and Graham wish to make amendments to this section because I did defer discussion on that. (Pause.) Okay. Thank you.

Delegate Corn.

MS. CORN: Could I defer to Delegare Oulahan? Would that be all right for me to concede?

MS. FREEMAN: Delegate Oulahan.

MR. OULAHAN: I'll only take two minutes. Fellow delgates, I urge you to vote again this article (a) as well as the other articles in this section. My reasons are thus.

You know, education started out as a religious matter. Thanks to priests and nuns and Protestants we had education in this United States when we were first established. The attitude of this article towards religious and private schools is almost nannophobic (phonetic).

Let me say here that the courts have developed a practical relationship between church and state which is being pushed far to far here.

Secondly, the United States will, in the future, be making grants to states on educational matters in blocks. Those block funds go to an organization established by the state which is supposed to represent all of the educational elements.

My advice to private and religious schools and colleges in the future is get your block grants from the federal government without going through the state because the constitution says you can't get those.

Secondly, I believe this article discriminates against private and parochial school students. Why shouldn't they who are of limited economic means as well be entitled to free school lunches, free school books and the use of buses and bus fares.

Finally, this charter amendment goes completely against the trend in the United States. Public and private schools are articulating both at the secondary and the higher education levels.

They work together. They're trying to produce an educational system which serves everyone. This article of the constitution goes completely against that trend, and I think it's just going to set a discordant note in both higher and secondary education in the District of Columbia.

So I urge you to vote that as well as the other divisions of this article. Thank you.

MS. FREEMAN: Delegate Lockridge, would you like to respond?

MS. LOCKRIDGE: Yes, Delegate Freeman. In answer to

the last things that Delegate Oulahan shared with you, I would like to share with you that as stated in our report, this committee had researched numbers of constitutions.

Let me share with you that I had before me sections from state constitutions prohibiting state aid to nonpublic schools--prohibiting state aid to nonpublic schools, that's what I'm referring to, Ms. Feeley.

I don't have before me the year in which these constitutions were written, but let me share them with you. Michigan, no public moneys or property shall be appropriated or paid or any public credit utilized by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, demoninational or other nonpublic pre-elementary, elementary or secondary school.

Idaho, Illinois and Colorado have a section that deals with public funds for secretarian purposes forbidden. South Dakota, aid to secretarian schools, no appropriation of lands, money or other property or credits to aid any secretarian school shall ever be made by the state or any county or municipality within that state.

Montana, California, and Utah all have the same language.

MR. KAMENY: Any many, many others so go on.

MS. LOCKRIDGE: So I would like to know when other states across this country have gone away from this in their constitutions.

MS. FREEMAN: All right. Delegate Corn.

MS. CORN: I would like to move an amendment to Section (a) that would appear at the end of the Schrag amendment. It would read as follows:

However, the state may provide to all students at schools which are not owned or exclusively controlled by the state copies of those text books which are required by the established minimum standard.

MS. FREEMAN: Is there a second to that motion?

A DELEGATE: Second.

MS. FREEMAN: Discussion.

MS. CORN: May I speak to my amendment?

MS. FREEMAN: Delegate Corn.

MS. CORN: The purpose of this amendment is as follows. Let us assume that any one of us is a 10th grade student, first quarter, and that the required minimum established standard is that in the first quarter of the 10th grade you will read A Tale of Two Cities and Moby Dick.

If you go to Wilson High School or any of the other

high schools, the school will provide you a copy of Moby Dick and A Tale of Two Cities. If you go to a private school, your private school may require that you read ten other books in that first quarter, but you also must, by the state standard, read Moby Dick and A Tale of Two Cities in English.

Why should you not have A Tale of Two Cities and Moby Dick provided to you if you go to a Catholic school, a Josheba, a Protestant school or any other school when, in fact, those are the two books that are required reading and the state would have to lay out the money for those two texts for you if you took your 10th grade first quarter at Wilson High.

I don't think the state should give you the money or the funds for any other books that your school may require you to read above those but those two which are the minimum standard--in this case, I use Moby Dick and A Tale of Two Cities--should be provided to you no matter where you go to school in the state.

MS. FREEMAN: Delegate Lockridge for the committee.

MS. LOCKRIDGE: There are two hands up, Delegate Feeley or Delegate Love.

MS. FEELEY: It's very interesting that when it suits the desires of delegates they're quite anxious to spend exorbitant amounts of money from the state treasury. Yet when

we talk about trying to do something else that ought to be done, all of a sudden you don't want to spend the money.

The school system presently spends approximately a million dollars on text books a year. Now, just imagine what that would do to the budget to have to provide text books for all the private schools in the city.

Multiply or divide whichever way you want to do your arithmetic by 30,000 the number of young people in private schools, and you will see that it is unconscionable for us to talk about providing textbooks, the same text books for public schools for private schools.

The other point is that some of the delegates seem to be forgetting the overwhelming vote that was made last November. What you're doing when you talk about providing aid to private schools, you're talking about going against what the voters had to say last November.

I urge the delegates to be frugal. Don't dwindle away the resources that we hope the state will have. Vote against this amendment. Thank you.

MS. FREEMAN: Delegate Robinson.

MR. ROBINSON: Thank you. I stand to speak in opposition to this amendment. Now we're being asked, according to this amendment, to provide books to private and parochial

schools. I say to you that this is no more than a form of aid, and this will violate that cherished principle of separation of church and state.

And I ask you to please vote this down.

MS. FREEMAN: Delegate Jordan.

MR. JORDAN: Yes, I'd also like to speak in opposition to this motion. In a parallel example if the city has a hospital that it operates that competes against private hospitals, are we to suggest then that if the city offered a certain kind of treatment in its public hospital which was not available at the private hospitals that we should to provide those services, I mean, the equipment and the technicians, the personnel and the training necessary for installing that equipment in private hospitals so that those who were patients at the private hospitals could receive them, too?

I would say that all must believe that we should not.

Now, those who send their children to private schools, parochial school, secretarian school, religious school make this decision on their own as a matter of choice. They understand when they send their students to these private institutions, to these parochial institutions, to these religious institutions the burden and the expense and the responsibility that is associated with that decision.

Now, I am just saying in many parallels we do not do it in our society and we should not do it here. So I think we should vote down this amendment.

MS. FREEMAN: Delegate Harris.

MS. HARRIS: Madam Chair, I would also like to ask the delegates not to put forward the Corn amendment. Most public systems are poor. Ours will be no different. And to create a no-win situation of financing private schools through the distribution of books would be absurd.

Are we saying that we will send 500 or 1,000 books to Sidwell Friends, to Cathedral School, to the Moonies' school, to the Moral Majority school. I just think it is unfair and I think we should vote it down.

MS. CORN: Madam Chair, may I say something?

MS. FREEMAN: I would like to know if there is any speaker in favor of this amendment. We've had three speakers against this amendment. Is there anybody who would like to speak in favor of this amendment?

Delegate Robinson, you spoke against it.

MR. ROBINSON: I move the previous question since there are no speakers.

MS. FREEMAN: No. Brian Moore, you had your hand up to speak in favor of this amendment. Yes.

MR. B. MOORE: I would like to ask a question first. How does the committee reconcile the idea of subjecting private schools to adhere to minimum standards of the state and yet at the same time not allow them to reap some of the benefits that are allowed the public schools?

MS. FREEMAN: Delegate Lockridge would you or one designee.

MS. LOCKRIDGE: We're all chomping at the bit but Delegate Simmons raised her hand first. I will defer to her.

MS. SIMMONS: Delegate Moore, you know that cosmologist are private entrepreneurs and they have to be licensed by the state for the protection of the general welfare. That is the reason we license doctors. They are in private practice.

Are you suggesting that you don't have regulations by the objective governmental bodies unless they subsidize whatever it is that they make rules and regulations on? I cannot believe that you raised that question.

MS. FREEMAN: Delegate Robinson.

MR. ROBINSON: I move the previous question.

VOICES: Second.

MS. FREEMAN: All right. There have been speakers on both sides of the question.

MS. CORN: If I might make one more statement, I'll

withdraw the question because I see there's no support for it. I would just make one statement for the record, please, and then I'll withdraw it.

MS. FREEMAN: Yes.

MS. CORN: I see there's no support so there's no point in going to a vote on this. My point was this. I do not believe that this is the same as aid to private schools. I, too, voted against the tax initiative credit last September and lobbied against it.

But I don't see this as anywhere the same thing as aid to a private school. I see it as providing that, in fact, it will make sure that those minimum standards that have been established are, in fact, enforceable.

My fear, in fact, is that there will be a lot of private schools set up which are not Sidwell Friends or Georgetown Day or one of those but a lot of little private schools which are lousy which will not even meet the standards of the worst public schools of the state.

MS. SIMMONS: They would lose their license.

MS. FREEMAN: Delegate Corn has the floor, please, committee.

MS. CORN: I don't see that this is akin to the hospital example that Delegate Jordan brought up because if you

are a patient and you went to a private hospital and they did not have the facilities or the equipment or the technicians to properly diagnose you you would turn around and go to the public hospital that had those things.

(Simultaneous discussion.)

MS. FREEMAN: I gave Delegate Corn the floor. She has five more seconds to speak, and she did promise to withdraw the amendment.

MS. CORN: That's it.

MS. FREEMAN: Thank you, Delegate Corn. Is there any further discussion on Subsection (a). Delegate Rothschild.

MR. ROTHSCCHILD: Yes. I would like to speak against Subsection (a) for the following reasons. First, let it be known that I did work against the initiative that was on the ballot promoting the tax credit for private schools. I didn't believe in that.

But I think, nevertheless, we have to separate equal access to education with the different options for education. I believe there should be equal access. I believe that your ability to pay is not necessarily the same thing as having the opportunity to go to different types of schools out there.

For example, we may want a voucher system. We may want something where somebody from a low income family could

take a voucher and go to some type of a private institution and get the education they could not get in a private system.

We are supposed to have an option. We might want to, at some time, provide more competition between the public and the private sector. It's not necessarily certain that either one of the sectors is better at providing quality education and competition sometimes is good to increase the quality in both sectors.

So I think by adopting Section 4(a) we are foreclosing that option, and I think we are doing ourselves a discredit. Now, it has been stated that other constitutions have this provision in it.

Well, people are starting to question the ability of public schools to provide quality education. That hasn't always been in the past.

Also, the public education lobby is always very strong. It may be that it's always strong enough to get something in the constitution to protect their interests in that area.

But I don't see any reason why our state has to be locked into a system which certainly does provide now certain things but which would prevent us in the future from experimenting with different types of systems and possibly creating

some competition and increasing the overall quality of education both in the private and public sectors. Thank you.

MS. FREEMAN: I see three hands in the air, and I'll call on people in this order. Oulahan, Jones and Brunig.

Delegate Oulahan.

MR. OULAHAN: Madam President, I want to clarify something that arose because of the statement of my good friend Barbara Simmons. The number of propriety private schools in the District of Columbia could be counted on the fingers of one hand.

Most of those institutions, 95 percent are either church related or nonprofit. They are not entrepreneurs. The same is also true at the higher education level. We are not talking about proprietary schools.

Now, in the licensing system of those states, although this is not true in the District of Columbia, but maybe we ought to have it, but in licensing, a distinction is drawn between the proprietary institution and the nonprofit institution.

Mrs. Simmons is quite right. For your proprietary educational institutions, consumer protection requires that you have harder requirements. I do not doubt that at all. But when it comes to a nonprofit institution, you use

different criteria because you're talking about two different entities.

MS. FREEMAN: Delegate Jones.

MS. JONES: Yes. I am rising in the defense of public education. Now, there's nothing nonprofit, and anybody in here who knows about a corporation knows that when you say you're nonprofit, you operate for a profit to either pay higher salaries, buy another machine, buy a scan machine if you're in a hospital, but you operate to make that profit, but you just plow it back into the corporation in order for you to buy those things that you want.

Now, if it's a for-profit, of course, you're putting the profit in your pocket, but in a nonprofit corporation, you're still putting it in your pocket, even if the profit belongs to the corporation.

One other thing that I wanted to say that in both private and public schools, I have bought books because the public schools have not had enough money to buy the books, and I don't dodge the fact that I buy the books. I don't resent the fact that I buy the books. And I defend public education because it should be there, and I'm a product of public education.

The problem that I'm having here is that--and I rise

in support of Subsection (a), because I think it ought to stay there. You do make a choice. You make a choice no matter what you do.

I don't think the state ought to tell me how to raise my child, and I don't think that the state ought to move in with money and regulations to tell private schools that are also nonprofit schools and whatever and for-profit schools, you know, about paying for their books. I do not think that money should go for that.

I rise in support of public education, and I don't like this business because you're nonprofit you're different from being profitmaking. I have sat on nonprofit boards and profit boards, and both of them profit, the same things, and we're talking about children.

MS. FREEMAN: Delegate Brunig.

MR. BRUNIG: Call the previous question.

A DELEGATE: Second.

MS. FREEMAN: It has been moved and seconded that we close debate on subsection (a). All those in favor please say aye.

(A chorus of ayes.)

MS. FREEMAN: All those opposed.

(A chorus of nays.)

MS. FREEMAN: All right. We are now voting on the adoption of Subsection (a) of Section 4. All those in favor of adopting Subsection (a) please say aye.

(A chorus of ayes.)

MS. FREEMAN: All those opposed.

(A chorus of nays.)

MS. FREEMAN: Abstentions.

(A chorus of abstains.)

MS. FREEMAN: Subsection (a) is carried.

Delegate Lockridge.

MS. LOCKRIDGE. Madam Chair, I move for the adoption of Section 4(b).

VOICES: Second.

MS. HARRIS: Section 4(b) has been moved and seconded. Is there any discussion?

Delegate Cooper.

MR. COOPER: Madam Chair, I move to strike Subparagraph (1) of Section 4(b).

A DELEGATE: Second.

MS. HARRIS: It has been moved and properly seconded that we strike Subsection (1) of 4(b). Delegate Jordan.

MR. JORDAN: A point of information, Madam President. Does this mean we leave Subparagraph (b) in but we strike one

subsection, (1).

MR. COOPER: (1). The one that reads "to support the attendance..."

MS. HARRIS: Yes, he's not speaking to the language on line 24, 25 and, and one through three, he's speaking lines 5 through 9. Is there discussion? Delegate Kameny.

MR. KAMENY: I would like to respond to the motion in urging you to oppose it. The motion lies squarely in the face virtually with precision and explicitness of the voice of the people as expressed at the polls in this state last November.

This is exactly what they voted for as expressed here. Delegate Cooper's motion flouts the voice of the people squarely. I do call your attention to one item that you should keep in mind, and that is the listing in Subsection (1) which he proposes to delete does not refer to university level.

The listing is, and it's intentionally done so, to students at pre-elementary, elementary, secondary schools, but not to colleges and universities. And that was the committee's intention.

So that tuition, for example, of students at specialized schools such as medical schools which the state university system might, at some particular juncture in history,

not have, or law schools, could be supported but not the attendance of students at the lower school levels.

I urge, repeat and close, if you respect the voice of the electorate in this city less than half a year ago, just half a year ago, vote against Delegate Cooper's amendment.

MS. HARRIS: Delegate Oulahan.

MR. OULAHAN: I would like to ask Mr. Kameny a question. Mr. Kameny, you say the institutions of higher education which would include graduate schools were not excluded so that funds could be made available to students attending, say, Georgetown Law School or Howard Law School?

MR. KAMENY: It was the committee's view, yes, that where there were facilities not provided by the state university system as it may exist at any particular juncture in time and there were private higher education facilities such as a law school or a medical school--this is mentioned in our report if you read it, and it says just that under those circumstances this does not prohibit the provision of funds in the manner suggested there.

The list, in other words, here is not the same list as in Section (a) just adopted and it is not the same list intentionally so.

MR. OULAHAN: Therefore, you saw no reason to see